

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Pittman Broadcasting Services, LLC) File No.: EB-FIELDSCR-12-00002372
Licensee of Station WUUU-FM and) NAL/Acct. No.: 201332620003
Owner of Antenna Structure Number 1064240,) FRN: 0004330825
Franklinton, Louisiana) Facility ID No.: 22992

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 30, 2013

Released: May 30, 2013

By the Deputy Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Pittman Broadcasting Services, LLC (Pittman), licensee of Station WUUU-FM (Station) and owner of antenna structure number 1064240 (the Antenna Structure), in Franklinton, Louisiana, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act),1 and Sections 11.35(a) and (b), 17.50, and 17.51(a) of the Commission’s rules (Rules),2 by failing to (1) maintain a functioning Emergency Alert System (EAS) equipment and logs; (2) clean or repaint the Antenna Structure as often as necessary to maintain good visibility; and (3) exhibit required antenna structure lighting. We conclude that Pittman is apparently liable for a forfeiture in the amount of twenty-two thousand, five hundred dollars (\$22,500). In addition, we direct Pittman to submit, no later than thirty (30) calendar days from the release date of this NAL, a statement signed under penalty of perjury stating that the Station’s EAS equipment is operational, and that the Station has taken measures to come into compliance with the Commission’s antenna structure painting and lighting rules.

II. BACKGROUND

2. On June 1, 2012, in response to a complaint that the Station’s EAS equipment was not operational, agents from the Enforcement Bureau’s New Orleans Office (New Orleans Office), accompanied by the Station’s operations manager, conducted an inspection of the main studio for the Station. The agents observed that the operations manager could not run a test of the EAS equipment, because the equipment would not power on. The operations manager stated that a lightning strike about two weeks prior must have damaged the EAS unit, but there was no record of the damage in the Station’s logs. In addition, the Station had no records of any monthly EAS tests being received or retransmitted since October 27, 2011, and of any weekly tests being transmitted after May 12, 2012.

1 47 U.S.C. § 303(q).

2 47 C.F.R. §§ 11.35(a), 11.35(b), 17.50, 17.51(a).

3. The Antenna Structure is 68.2 meters in overall height above ground and is required to be painted and lighted.³ During the inspection on June 1, 2012, the agents observed that the paint on the structure was severely faded and chipped throughout the structure. The paint on the Antenna Structure had deteriorated to such a degree that the agent was unable to discern alternating bands of color on the structure from any distance. The agents inquired about the status of the Antenna Structure's lights and the Station's light monitoring practices. The operations manager stated that the Antenna Structure's lights were working and that he or the Station's owner visually observed the structure's lights in the evening, because the remote monitoring system had been damaged in a lightning strike.

4. On June 4 and 5, 2012, an agent from the New Orleans Office observed that the top beacon of the Antenna Structure was not lit at or after sunset.⁴ On June 14, 2012, Pittman's owner spoke to an agent on the telephone and admitted that the top beacon of the Antenna Structure had been out since September 2011. Pittman's owner stated that he notified the FAA of the outage in September 2011, but had not done so since.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁵ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁰

³ See 47 C.F.R. § 17.21(a) (requiring antenna structures more than 60.96 meters in height above the ground to be painted and lighted). See also Antenna Structure Registration database for antenna structure number 1064240.

⁴ On June 4, 2012, an agent confirmed with the Federal Aviation Administration (FAA) that there was no current Notice to Airmen (NOTAM) listed for the Antenna Structure. The FAA issued a NOTAM on June 4, 2012, after being notified of the outage by the agent. See 47 C.F.R. § 17.48(a) (requiring owners to notify the FAA immediately of any known extinguishment of a top beacon not corrected within 30 minutes).

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

⁸ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the

A. Failure to Maintain Operational EAS Equipment and Logs

6. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source.¹¹ The EAS enables the President and state and local governments to provide immediate communications and information to the general public.¹² State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from the sources such as the National Weather Service or local emergency management officials.¹³ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the EAS is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

7. Section 11.35(a) of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.¹⁴ Section 11.35(b) of the Rules states that, “[i]f the EAS Encoder or EAS Decoder becomes defective, . . . [e]ntries shall be made in the broadcast station log . . . showing the date and time the equipment was removed and restored to service.”¹⁵ Section 73.1820(a)(1)(iii) of the Rules requires licensees to create an entry for each test and activation of the EAS in the station log or in a special EAS log.¹⁶ On June 1, 2012, agents from the New Orleans Office observed, when the station was in operation, that the Station's EAS equipment was incapable of powering on. The Station had no evidence or logs that the Station's EAS equipment had received or retransmitted a monthly EAS test after October 27, 2011, or transmitted a weekly EAS test after May 12, 2012. Moreover, the Station's EAS logs contained no entries after October 27, 2011, regarding defective EAS equipment. Based on the evidence before us, we find that Pittman apparently willfully and repeatedly violated Sections 11.35(a) and (b) of the Rules by failing to maintain operational EAS equipment and complete EAS logs.

B. Failure to Comply with Antenna Structure Painting and Lighting Requirements

8. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹⁷ Section 17.50 of the Rules states that “[a]ntenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility.”¹⁸ Section 17.51(a) of the Rules states that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”¹⁹

commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹¹ 47 C.F.R. §§ 11.11, 11.41.

¹² 47 C.F.R. §§ 11.1, 11.21.

¹³ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local, and relay EAS sources. 47 C.F.R. § 11.21.

¹⁴ 47 C.F.R. § 11.35(a).

¹⁵ 47 C.F.R. § 11.35(b).

¹⁶ 47 C.F.R. § 73.1820(a)(1)(iii).

¹⁷ 47 U.S.C. § 303(q).

¹⁸ 47 C.F.R. § 17.50.

¹⁹ 47 C.F.R. § 17.51(a).

9. On June 1, 2012, agents from the New Orleans Office observed that the paint on the Antenna Structure was severely faded and did not provide good visibility. The condition of the paint had deteriorated such that the agents were unable to discern alternating bands of color on the structure from any distance. On June 4 and 5, 2012, an agent also observed that the top beacon on the Antenna Structure was extinguished at and after sunset. Pittman's owner admitted that the top beacon had been dark since September 2011. Based on the evidence before us, we find that Pittman apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.50 and 17.51(a) of the Rules by failing to (1) clean and repaint the Antenna Structure to maintain good visibility, and (2) exhibit required red obstruction lighting on the Antenna Structure.

C. Proposed Forfeiture and Reporting Requirement

10. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain functioning EAS equipment is \$8,000, and for failing to comply with antenna structure prescribed lighting and painting specifications is \$10,000.²⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²¹ In doing so, we find that the facts and circumstances of this case justify an upward adjustment of the base forfeiture amount for the EAS violations. Today, we issued an enforcement action involving an EAS violation at Station KVOL-AM, which is another broadcast station owned by Pittman.²² Agents from the New Orleans Office observed that Station KVOL-AM did not have operational EAS equipment on April 27, 2012. Pittman was aware of the violation and admitted that Station KVOL-AM had been without operational EAS equipment for several months, yet failed to take immediate steps to ensure that Station WUUU-FM had an operational EAS.²³ Accordingly, the current violation represents the second EAS violation found at a Pittman-owned station, warranting an upward adjustment in the amount of \$4,000. Furthermore, Pittman's failure to maintain complete EAS logs warrants an additional upward adjustment in the amount of \$500.²⁴ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Pittman is apparently liable for a total forfeiture in the amount of \$22,500, consisting of the following: \$12,500 for the EAS violations and \$10,000 for the antenna structure lighting and painting violations.

11. We direct Pittman to submit a written statement, pursuant to Section 1.16 of the Rules,²⁵ signed under penalty of perjury by an officer or director of Pittman, stating that the Station has complied with the Commission's EAS and antenna structure painting, lighting, and monitoring requirements.²⁶ The

²⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 503(b)(2)(E).

²² *Pittman Broadcasting Services, LLC*, File No. EB-FIELDSCR-12-00002104, Notice of Apparent Liability for Forfeiture and Order, DA 13-1244 (Enf. Bur. May 30, 2013).

²³ *Id.* at 1–2, ¶¶ 3–4.

²⁴ *See Iglesia Cristiana Ebenezer of Greenville, Texas*, Notice of Apparent Liability for Forfeiture and Order, DA 13-1004, 2013 WL 1881507 (Enf. Bur. May 6, 2013) (imposing \$1,000 upward adjustment for failure to maintain EAS logs).

²⁵ 47 C.F.R. § 1.16.

²⁶ *See* 47 C.F.R. § 17.47 (requiring antenna structure owners to observe visually antenna structure lights once every 24 hours to ensure proper functioning). Pittman's operations manager stated on June 1, 2012, that the structure's lights were functioning. However, Pittman's owner stated on June 14, 2012, that the top beacon had been dark since September 2011. Pittman's operations manager stated that he and Pittman's owner were responsible for monitoring

statement should specify any steps taken to come into compliance, including the timeframe for the (1) repair or replacement of the Station's EAS equipment, (2) repair or replacement of the structure's top beacon, and (3) repainting of the structure. Pittman must also state that, until the lights are repaired or the structure is dismantled, an employee of Pittman will ensure that the FAA maintains an active NOTAM regarding the structure. This statement must be provided to the New Orleans Office at the address listed in paragraph 17, below, within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Pittman Broadcasting Services, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-two thousand, five hundred dollars (\$22,500) for violations of Section 303(q) of the Act and Sections 11.35(a) and (b), 17.50, and 17.51(a) of the Rules.²⁷

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Pittman Broadcasting Services, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. **IT IS FURTHER ORDERED** that Pittman Broadcasting Services, LLC **SHALL SUBMIT** a written statement, as described in paragraph 11, above, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, Room 460, 2424 Edenborn Ave., Metairie, Louisiana 70001. Pittman shall also e-mail the written statement to SCR-Response@fcc.gov.

15. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Pittman Broadcasting Services, LLC shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The

the Antenna Structure's lights. Given the discrepancy regarding the lighting's status, we are concerned that Pittman may not be complying with the antenna structure monitoring requirements.

²⁷ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35(a), 11.35(b), 17.50, 17.51(a).

²⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

16. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.³⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, Room 460, 2424 Edenborn Ave., Metairie, Louisiana 70001, and include the NAL/Acct. No. referenced in the caption. Pittman Broadcasting Services, LLC also shall e-mail the written response to SCR-Response@fcc.gov.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Pittman Broadcasting Services, LLC at 307 S. Jefferson Ave., Covington, Louisiana 70433.

FEDERAL COMMUNICATIONS COMMISSION

Lloyd Perry
Deputy Regional Director
South Central Region
Enforcement Bureau

²⁹ See 47 C.F.R. § 1.1914.

³⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).